

**MISSOURI DEPARTMENT OF NATURAL RESOURCES  
LAND RECLAMATION COMMISSION**

In the Matter of:	)	
	)	
AA QUARRY LLC	)	Proceeding Under
AA Quarry Site # 2462	)	The Land Reclamation Act,
Johnson County, Missouri,	)	Sections 444.760 – 444.789, RSMo
New Site Permit Application	)	
	)	
DAVID EARLS, et al,	)	
<i><b>Petitioners,</b></i>	)	
	)	
v.	)	Permit # 1094
	)	
DEPT. OF NATURAL RESOURCES,	)	
KEVIN MOHAMMADI,	)	
Staff Director,	)	
Land Reclamation Program,	)	
Division of Environmental Quality,	)	
<i><b>Respondent,</b></i>	)	
	)	
AA QUARRY LLC.,	)	
<i><b>Applicant,</b></i>	)	
	)	

**ORDER SETTING PROCEDURE ON PETITIONERS' OFFER OF PROOF**

**Background for Order**

Petitioners, in their Suggestions in Opposition to Applicant's Motion to Exclude Evidence of Issues Outside of the Land Reclamation Commission's Jurisdiction and to Dismiss any Claims Relative Thereto, indicated in the event of the Hearing Officer granting Applicant's Motions, the desire to make an offer of proof in order to preserve the record.<sup>1</sup>

In order for Petitioners to make their Offer of Proof on the exclusion of evidence relating to the dismissed claims addressing matters of: (1) the nature of Route AA and the impact of truck traffic on the road; (2) impact on property values from the operation of the proposed quarry; (3) blasting at the quarry; (4) noise and vibration resulting from operating the quarry and/or truck traffic; and (5) impact on the general aesthetics and beauty of the land in proximity to the proposed quarry site, in the most orderly fashion, the Hearing Officer hereby establishes the procedure to be followed.

## **Legal Principles for an Offer of Proof<sup>2</sup>**

“There can be no error in the exclusion of evidence or testimony unless that evidence or testimony is offered by a party and refused by the trial court. . . . If evidence is refused, the proponent of that evidence has the burden of making an offer of proof. That offer serves two purposes: first, gives the trial court and opposing counsel as much information as possible about the proposed evidence, so that counsel can take appropriate action and so the court can make an informed decision about its admissibility, . . . and, to demonstrate to an appellate court that the trial court’s decision resulted in the exclusion of relevant and admissible evidence and prejudiced the appellant. . . . The burden is on the party offering the evidence to explain the theory of admissibility. . . .

“An offer of proof is not itself evidence. . . .

“An offer of proof must specifically and definitively show (1) what the proffered evidence will be, (2) its object and purpose, and (3) all the facts necessary to establish its relevance and admissibility.

“Where oral testimony is offered, an offer of proof ordinarily is made by placing the witness on the stand and asking the witness the proposed questions and making the expected answers known to the court outside the presence of the jury. . . . (. . . ‘preferred’ method).”

## **Procedure on Petitioners’ Offer of Proof**

### ***Submission of Exhibits and Written Direct Testimony***

On or before January 8, 2014 (*postmarked on or before*), Petitioners shall file with the Hearing Officer all their exhibits they wish to tender under the Offer of Proof. Exhibits should be no larger than 8 ½ by 11 inches. Exhibits which consist of photographs shall be affixed to or copied on 8 ½ by 11 inch paper, and each photograph shall be identified in a brief statement or descriptive phrase on the face of the exhibit. More than one photograph may be placed on one page, if space so permits to identify each photograph and provide the descriptive statement. The exhibits shall be identified by the initials OP and letters beginning with A, *i.e.* Exhibit OP-A; Exhibit OP-B, etc., in sequence.

Simultaneous with the filing of exhibits Petitioners shall file an Offer of Proof Exhibit List which shall identify which specific dismissed claim each individual exhibit relates to for the Offer of Proof.

Simultaneous with the filing of exhibits Petitioners shall file the written direct testimony of each witness who would testify relative to the tendered Offer of Proof exhibits and the dismissed claims. Written direct testimony shall be in a question and answer form with each question numbered sequentially, typed on 8½ by 11 inch paper. Questions and answers may be identified by number or line numbers on the page. Written direct testimony must be as complete

and accurate as if it were oral testimony. Written direct testimony is to be subscribed and sworn to by each witness before a notary public.

The Offer of Proof Exhibits, Offer of Proof Exhibit List and Written Direct Testimony of each witness will be served upon Counsel for Applicant and Counsel for Respondent at the same time the documents are filed with the Hearing Officer. All Offer of Proof Exhibits, the Offer of Proof Exhibit List and Written Direct Testimony shall be filed and served in hardcopy form.

***Additional Objections to Exhibits and Written Direct Testimony***

On or before January 23, 2014, Counsel for Applicant and Counsel for Respondent may file any additional objections to the tendered Offer of Proof Exhibits and Written Direct Testimony. Grounds for exclusion previously submitted and ruled on by the Hearing Officer in his Order Excluding and Dismissing need not be restated, as same have been preserved in the Record. Objections may be filed and served via email attachment

***Response to Objections***

On or before February 7, 2014, Counsel for Petitioners may file responses to additional objections made by Counsel for Applicant and Counsel for Respondent. Responses may be filed and served via email attachment.

***Cross-Examination of Witnesses & Rebuttal Exhibits***

In the event that either Counsel for Applicant or Counsel for Respondent wishes to conduct cross-examination and/or offer rebuttal exhibits under the offer of proof, request is to be made in writing – email attachment acceptable. If any such request is made, the matter will be taken up in hearing in advance of convening the formal public hearing, at a time and location to be established by the Hearing Officer after consultation with the parties.

SO ORDERED: November 27, 2013.

MISSOURI DEPARTMENT OF NATURAL RESOURCES



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### ***Certification of Service***

I hereby certify a copy of foregoing has been sent via email this 27<sup>th</sup> day of November, 2013, to:

Attorneys:

G. Steven Ruprecht, Attorney for Applicant: [sruprecht@brlawkc.com](mailto:sruprecht@brlawkc.com)

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W. B. Tichenor

DNR – Hearing Officer

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<sup>1</sup> Petitioners' Suggestions in Opposition, p. 21

<sup>2</sup> See, Courtroom Handbook on Missouri Evidence, 2013, Wm. A. Schroeder, § 103.9 – Offers of Proof, pp. 30 – 33; citations omitted in this Order